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Return Date & Time:
JUNE 17, 2015 9:30 AM

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 Case No: 114-45297-NHL
IN RE:

NOTICE OF MOTION

AIXA MUIR,
Debtor.

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PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Nancy Hershey Lord, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 2529 on JUNE 17, 2015 at 9:30 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Syosset, New York
May 28, 2015

/s/ Marianne DeRosa

MARIANNE DeROSA, TRUSTEE
115 EILEEN WAY, SUITE 105
SYOSSET, NEW YORK 11791
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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JUNE 17, 2015
9:30 AM

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IN RE:

Chapter 13 114-45297-NHL

AIXA MUIR,

Debtor.

APPLICATION

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TO THE HONORABLE NANCY HERSHEY LORD, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on NOVEMBER 17, 2014, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereinafter "The Plan"), dated December 9, 2014, filed with the Court on December 11, 2014, and reflected in the Court's docket as number 19 provides for a monthly Plan payment of \$200.00 per month for a period of 3 months, followed by a monthly Plan payment of \$3,000.00 per month for the remaining 57 months. Additionally, The Plan provides for full repayment to all filed secured and priority proofs of claim, as well as a pro rata distribution to general unsecured proofs of claim of not less than 1%.

3. The Trustee objects to the confirmation of the Plan because the Debtor's proposed Plan payment is insufficient to pay secured claims in full as required by 11 U.S.C. §1325(a)(5).

4. Furthermore, the Debtors budget filed on December 11, 2014, reflected in the Court's docket as number 18, indicates, after all monthly expenses as evidenced by Schedule J, a negative cash flow and clearly demonstrates that the Debtor will not be able to fund any Plan as required by 11 U.S.C. §1325(a)(6).

5. In addition, the Debtor has failed to:

- a. provide the Trustee with proof of post-petition mortgage payments seven business days before the first meeting of creditors as required by E.D.N.Y. LBR 2003-1(a)(vi);
- b. provide the Trustee with proof of post-petition mortgage payments seven days before the first date set for confirmation of the Chapter 13 Plan as required by E.D.N.Y. LBR 2003-1(b)(i);
- c. provide the Trustee with a copy of an affidavit by the Debtor stating the Debtor has paid all amounts that are required to be paid under a domestic support obligation or that the Debtor has no domestic support obligations as required by E.D.N.Y. LBR 2003-1(b)(ii)(A) and (B);

- d. provide the Trustee with a copy of affidavit from the Debtor stating whether the Debtor has filed all applicable federal, state and local tax returns under the Bankruptcy Code Section 1308 as required by E.D.N.Y. LBR 2003-1(b)(iii);
- e. file the original affidavits with the Court as required under subdivisions (b)(ii) and (iii) as required by E.D.N.Y. LBR 2003-1(c).
- f. comply with 11 U.S.C. §1325(a)(6) in that the Debtor has not submitted timely Chapter 13 plan payments to the Trustee, and is \$6,000.00 in arrears through and including May 2015.

6. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

7. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case and such other and further relief as may seem just and proper.

Dated: Syosset, New York
May 28, 2015

/s/ Marianne DeRosa
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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Chapter 13 Case No: 114-45297-NHL

IN RE:

AIXA MUIR,

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

-----X

This is to certify that I, DANI M. BOYER, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

AIXA MUIR
1192 BUSHWICK AVENUE
BROOKLYN, NY 11221

DOYAGA & SCHAEFER, ESQS.
26 COURT STREET, STE 1002
BROOKLYN, NY 11242

OCWEN LOAN SERVICING, LLC
C/O McCABE WEISBERG & CONWAY
145 HUGUENOT STREET, STE 210
NEW ROCHELLE, NY 10801

This May 28, 2015

/s/DANI M. BOYER
DANI M. BOYER, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
115 Eileen Way, Suite 105
Syosset, New York 11791
(516) 622-1340

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UNITED STATES BANKRUPTCY COURT
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IN RE:

AIXA MUIR,

Debtor.

NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
115 EILEEN WAY, SUITE 105
SYOSSET, NEW YORK 11791
(516) 622-1340
